



November 26, 2002

Mr. Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

OR2002-6778

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID#172918.

The Texas Alcoholic Beverage Commission (the "commission") received a request for all commission documents related to Thirsty I Lounge located at 11806 N. Lamar in Austin, Texas. The requestor also provided the permit number for the establishment. You state that you have released some of the requested information to the requestor. You claim, however, that some of the requested information is excepted from disclosure under sections 552.130 and 552.101 of the Government Code in conjunction with section 5.48 of the Texas Alcoholic Beverage Code and section 56.001 of the Occupations Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

You claim that the original application and the renewal applications of the permittee are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information made confidential by statute. Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a)"Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(b)The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term “privileged” in this statute has been construed to mean “confidential” for purposes of the Public Information Act. Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of “the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof” and “any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee.” You state that the original application and the renewal applications are “private records” provided to the commission by a permittee. You also state that “there have been no administrative actions taken by the agency against the applicant wherein the original application and/or the renewal applications were introduced into evidence.” Consequently, we agree that, other than the name, proposed location, and type of license or permit sought, the original application and renewal applications are made confidential by section 5.48 of the Alcoholic Beverage Code. The commission must therefore withhold this information under section 552.101 of the Government Code.

Section 552.101 also protects information made confidential by section 56.001 of the Occupations Code, which provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 56.001.² You indicate that the commission obtained the permittee’s social security number in connection with the issuance of a professional license. Accordingly, we find that the permittee’s social security number is confidential under section 56.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

²The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. See Act of May 22, 2001, 77th Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon’s) (repealing section 1, chapter 314, Acts of the 76th Legislature, Regular Session, 1999).

You further contend that the driver's license numbers contained in the submitted information are confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, pursuant to section 552.130, the department must withhold the Texas driver's license numbers contained in the submitted information.

In summary, other than the name, proposed location, and type of license or permit sought, the commission must withhold the original application and renewal applications under section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. With regard to the information not protected by section 5.48 of the Alcoholic Beverage Code, the commission must withhold all driver's license numbers under section 552.130 of the Government Code and the permittee's social security number under section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public

records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 172918

Enc: Submitted documents

c: Mr. Jamison M. Travis
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(w/o enclosures)